

EXHIBIT B

Trial Testimony pgs. 19-118, 147-154

COMMONWEALTH	Direct	Cross	Redirect	Recross
	22	67	96	101
Darrin Bates				
Jon Fustine	108	113	117	
Darrin Bates	150	152		

19

1 evidence in the case, and that's solely for him
2 to decide. That is their decision whether they
3 want to present any testimony or not. The
4 defendant in a criminal case doesn't have to
5 prove a thing. He doesn't have to prove, I
6 didn't do this. The Commonwealth has to prove
7 the case beyond a reasonable doubt.

8 So they have the burden to prove the
9 case. Even if the defense decides not to call
10 any witnesses, that burden still stays with the
11 Commonwealth.

12 So I'm asking you right now to keep an
13 open mind. You'll hear the Commonwealth's case
14 go first, and then you'll hear the defendant's
15 case, if any, and then you'll wait until I give
16 you the law before you render a decision in this
17 case.

18 We're going to begin the opening
19 statements very shortly. And the opening
20 statements by the attorneys are not evidence.
21 It's sort of a roadmap of what they expect to
22 prove to you, but it's not evidence in reaching
23 your conclusion or determining the facts. That
24 comes from the witnesses stand as you'll hear the
25 witnesses sworn and testify before you.

20

1 The defendant, as I indicated,
2 Mr. Robertson, has been charged with unlawful
3 possession of a firearm; firearm, carrying
4 without a license; possession with intent to
5 manufacture or deliver a controlled substance;
6 and possession of drug paraphernalia.

7 The Commonwealth has to prove each and
8 every element of the crime charged to you beyond
9 a reasonable doubt. Whether the Commonwealth
10 does so will be for you to decide at the end of
11 the case.

12 This is a criminal case, ladies and
13 gentlemen, so your verdict must be unanimous.
14 That means in order to return a verdict, each of
15 you must agree to it. You have a duty to consult
16 with each other and to deliberate with a view to
17 reaching an agreement if it can be done without
18 doing any violence to your individual judgment.
19 Each of you must decide the case for yourself,
20 but only after there has been impartial
21 consideration with your fellow jurors.

22 In the course of deliberations each of
23 you as jurors should not hesitate to re-examine
24 your own views and change your opinion if
25 convinced it is erroneous; however, no juror

21

1 should surrender an honest conviction as to the
2 weight or effect of the evidence solely because
3 of the opinion of your fellow jurors or for the
4 mere purpose of returning a verdict.

5 The verdict you reach is the right
6 verdict. There is no wrong verdict. You're the
7 conscience of the community, and what you decide
8 is the right answer. If you say, I determined
9 the facts, I followed the law, whatever verdict
10 you reach, you've done that job, and you've done
11 a great job.

12 So at this time I invite Mr. Zawisky to
13 give you an opening statement.

14

15 (Openings statements
16 of counsel were reported
but not transcribed.)

17

18 THE COURT: All right. Ladies and
19 gentlemen, we will break for lunch, and we'll
20 resume at 1:00 p.m.

21 So at this time I'm going to release you
22 for your lunch break. Please do not discuss the
23 case amongst yourselves until we reach the
24 conclusion of the trial and I give you the law.

25 And I'll see you back here so we can

22

1 start at one o'clock. Thank you.

2

3 (A lunch recess was taken.)

4

5 THE COURT: All right. Mr. Zawisky.

6 MR. ZAWISKY: Commonwealth calls Officer
7 Bates.

8

9 DARRIN BATES,
called as a witness,
10 being duly sworn or affirmed,
testified as follows:

11

12

13

14

DIRECT EXAMINATION

15 BY MR. ZAWISKY:

16 Q Please state your name.

17 A Darrin Bates.

18 Q And Officer Bates, with whom are you
19 employed?

20 A Harrisburg City police department.

21 Q And in what capacity?

22 A I'm on the -- currently assigned to the
23 Street Crime Unit for about a year, a little over
24 a year and a half.

25 Q How long have you been a police officer?

1 A **Approximately 13 years.**
 2 Q And how long had you been with patrol?
 3 A **Patrol would have been about nine.**
 4 Q Did you start out with patrol?
 5 A **Correct.**
 6 Q And you've been with the Street Crimes
 7 since when?
 8 A **January of last year.**
 9 Q Tell us what the Street Crimes Unit does.
 10 A **We focus on saturating the**
 11 **high-drug-and-crime areas, trying to deter,**
 12 **prevent crimes from occurring; identify people**
 13 **who may be wanted; driving with probation**
 14 **officers to assist them on safety issues; and**
 15 **street-level drug interdictions.**
 16 Q Essentially, interdictions are situations
 17 where what happens?
 18 A **Traffic stop or making an arrest, finding**
 19 **a wanted individual, finding drugs on them, guns;**
 20 **assisting Vice on apprehending their buy/busts.**
 21 Q Is it a proactive unit?
 22 A **Yes.**
 23 Q Okay. I'm gonna direct your attention to
 24 April 7th, 2012. Were you working in the early
 25 morning hours that day?

1 A **Yes.**
 2 Q And specifically I'm gonna direct you --
 3 direct you to 30 -- well, just after midnight,
 4 about 30 minutes after midnight.
 5 A **Yes.**
 6 Q Were you working at that time?
 7 A **Yes.**
 8 Q Who were you working with that evening?
 9 A **I was assigned with Dauphin County Adult**
 10 **Probation Officer Travis Banning.**
 11 Q Were you guys in a marked car or unmarked
 12 car?
 13 A **Unmarked white Tahoe, tinted windows.**
 14 Q Is it common for you guys to drive that
 15 vehicle around?
 16 A **Yes.**
 17 Q Is it just you and Adult Probation
 18 Officer Banning?
 19 A **At that time, yes.**
 20 Q What was your initial goal that evening
 21 or one of your duties that evening?
 22 A **Primarily, the PO would get in and say, I**
 23 **have several checks, different locations**
 24 **throughout the city.**
 25 **We try to get those checks for him by a**

1 **certain amount of time because later at nig**
 2 **then people are in bed, so he doesn't want to**
 3 **knock on the door.**
 4 **During which he had said he received**
 5 **information that a wanted individual by the name**
 6 **of Corey Sellers was to be in the Hall Manor**
 7 **area, around 17 Row, visiting a -- I believe his**
 8 **child's mother who just gave birth to his child.**
 9 **He was to be either in one of the rows**
 10 **there or in a vehicle that was owned by a family**
 11 **member of Kashif Robertson.**
 12 Q So the information was that he's with
 13 Kashif Robertson.
 14 A **He didn't say he was with him. He just**
 15 **said he was in the -- he would be in a vehicle**
 16 **that belonged to Kashif if he was driving.**
 17 Q Did you have a description of that
 18 vehicle?
 19 A **Yes.**
 20 Q And what was that description?
 21 A **It was a green Chrysler, and he had the**
 22 **registration -- or, I'm sorry, he did not have**
 23 **the registration. He said it should have been,**
 24 **if it's parked up there, around 17 Row.**
 25 Q Now, can you describe Hall Manor for us,

1 what it looks like?
 2 A **It's several row homes or apartments.**
 3 **It's like a snake throughout the area. It starts**
 4 **with Number 1, goin' all the way up to in the**
 5 **50's, basically comin' around like a snake, all**
 6 **through, up from the north to the south.**
 7 Q Is that in the south side of Harrisburg?
 8 A **Yes.**
 9 Q With this information, were you looking
 10 for Corey Sellers?
 11 A **Yes.**
 12 Q And did you have a warrant for his
 13 arrest?
 14 A **Yes, for assault.**
 15 Q Simple assault?
 16 A **Yes.**
 17 Q All right. You have this warrant.
 18 You're lookin' for Corey Sellers. You have this
 19 information. Do you go to 17 Row Hall Manor or
 20 that general vicinity?
 21 A **Yes. I told APO Banning, I said, why**
 22 **don't we just drive up there, check the area, see**
 23 **if the vehicle happens to be parked there? Maybe**
 24 **we can sit on it and watch it.**
 25 Q All right.

1 A **And it just so happened to be there.**
 2 Q So you go to that location.
 3 A **Yes.**
 4 Q Specifically, do you remember where you
 5 parked your vehicle?
 6 A **Yes. More south of Row 12, which would**
 7 **be traveling -- the row would be facing north and**
 8 **south, and the entrances would be the east and**
 9 **the west.**
 10 Q I'm gonna show you what's been marked as
 11 Commonwealth's Exhibit 1.
 12 Is this a fair and accurate depiction of
 13 an aerial view of the area of 12 Hall Manor and
 14 17 Hall Manor?
 15 A **Yes.**
 16 Q To the left there's a circle with a dot,
 17 and it says HPD.
 18 A **Yes.**
 19 Q What would that signify, that location?
 20 A **That would be the approximate area that I**
 21 **was sitting, backed in between two vehicles, kind**
 22 **of covering me.**
 23 Q All right. And you would have had
 24 vehicles on both your left and both your -- as
 25 well as on your right.

1 would have been is signified by HPD.
 2 A **Yes.**
 3 Q And then to the right as you look at this
 4 document, there's an arrow with 17 Hall Manor
 5 pointed to a row of apartments. Is that 17 Row
 6 Hall Manor?
 7 A **Yes.**
 8 Q And to the side of that, in a parking lot
 9 there's a circle with a triangle. Would that
 10 have been the general location where the
 11 suspected defendant's vehicle was located?
 12 A **Yes.**
 13 MR. ZAWISKY: All right. Your Honor, I'd
 14 ask that Commonwealth's Exhibit 1 be moved into
 15 evidence and be published to do jury.
 16 THE COURT: Any objection?
 17 MR. McQUILLAN: No objection.
 18 THE COURT: All right. You may publish
 19 it.
 20 MR. ZAWISKY: All right. Folks, you can
 21 just pass it down and back around.
 22
 23 (The evidence was
 24 published to the jury.)
 25

1 A **Yes.**
 2 Q Okay. Were you backed up -- were you
 3 pulled straight ahead? Backed in?
 4 A **I was backed in so I could see everything**
 5 **in front of me.**
 6 Q Okay. In other words, if you're parked
 7 there, and you're near 12 Row, you could look
 8 towards 17 Row.
 9 A **Correct. I could see 13 all the way to**
 10 **about 19.**
 11 Q All right. Now, 17 Row, do you see that
 12 signified on this exhibit?
 13 A **Yes.**
 14 Q And is that signified by a circle with
 15 what appears to be a triangle?
 16 A **No. That would be 16 Row. The**
 17 **information that was received, he was to be**
 18 **affiliated to somebody in 17 Row; however, when**
 19 **the vehicle was found, it was parked -- due to**
 20 **probably other vehicles parked in the other**
 21 **spots, it was parked further down, closer to 16.**
 22 Q All right. So 12 Hall Manor, that row is
 23 indicated on this sheet, correct?
 24 A **Yes.**
 25 Q And then the place where your vehicle

1 BY MR. ZAWISKY:
 2 Q So Officer, you're backed in near 12 Hall
 3 Manor.
 4 A **Yes.**
 5 Q Okay. Now, if you look -- well, let me
 6 ask you this: 17 Row would have been, if you're
 7 in your driver's seat --
 8 We'll assume you're in the driver's seat.
 9 17 Row would be to your right.
 10 A **It sits more -- yeah, to my right,**
 11 **further up.**
 12 Q Okay. And would you have been able to
 13 see what was goin' on in front of 17 Row Hall
 14 Manor?
 15 A **Yes.**
 16 Q Okay. It's dark out at that time of
 17 night, correct?
 18 A **Yes.**
 19 Q Are there lights, streetlights, in that
 20 area?
 21 A **Yes. There's actually -- directly across**
 22 **the street in front of his vehicle, a couple of**
 23 **feet to the right of it if I was sitting inside**
 24 **of it -- or if you're facing it, to the left --**
 25 **there was a light, a streetlight there.**

1 Q Okay. Do you confirm that vehicle as
2 being connected to the defendant, Kashif
3 Robertson?
4 A **Yes. APO Banning had stopped -- since it**
5 **was backed in, couldn't read the tag, we looked**
6 **around to make sure nobody could see us. There**
7 **was nobody out at the time. He ran out, got the**
8 **tag, got back in the car. We ran it and**
9 **confirmed it came back to Kashif Robertson.**
10 Q Okay. At that point what are you guys
11 doing?
12 A Since I verified with his information it
13 was a green Chrysler, it was parked in that area,
14 it came back to that person's name, decided to
15 sit on the vehicle to see if anybody comes to the
16 vehicle, gets in it, possibly Corey Sellers.
17 Q In other words, corroborate that
18 information that was provided to you.
19 A **Yes.**
20 Q You guys are sittin' there. What happens
21 next?
22 A **I'm asking APO Banning if he knew what**
23 **Corey Sellers looked like. He wasn't sure, so he**
24 **pulled his computer out to pull up our JNET,**
25 **which shows all the driver's license and photos.**

1 **While he's tryin' to log in, he has his**
2 **computer on his lap, this is when I observed two**
3 **individuals comin' around 17 Row area.**
4 Q Okay. So you're sittin' there, and over
5 to your right you see two individuals. Can you
6 describe them for us generally?
7 A **Two black males. One's a little thinner**
8 **than the other. Corey Sellers at the time was**
9 **wearing a long-sleeved red shirt. I'm unsure**
10 **what Mr. Robertson was wearing. Both had pants**
11 **on, both had short hair, and both of them were**
12 **walkin' towards the vehicle.**
13 Q Did Corey Sellers at least match the
14 general description of the person who was wanted?
15 In other words --
16 A **Yes.**
17 Q -- the race --
18 A **Yes.**
19 Q -- the racial make-up of the person?
20 A **Yes.**
21 Q So these two individuals are walking
22 towards the green Chrysler. Was that parked in
23 with the front forward or the back? Was it
24 backed in?
25 A **It was backed in.**

1 Q Okay. Kinda like your vehicle.
2 A **Correct.**
3 Q All right. You see these two guys
4 walkin' towards Kashif Robertson's car. What's
5 the next thing that happens?
6 A **Kashif Robertson opens his driver's side**
7 **door, gets in simultaneously as Mr. Sellers gets**
8 **in as well.**
9 **Now, Mr. Sellers shuts the door.**
10 **Mr. Robertson gets out, goes to the back of his**
11 **side, opens that door, gets inside of it --**
12 **halfway in a couple seconds. Goes around to the**
13 **rear of his vehicle and opens the trunk. And I**
14 **couldn't see him after that. He was behind the**
15 **trunk for a minute.**
16 Q Okay. So Sellers gets in the passenger's
17 seat. Robertson gets in the driver's seat
18 briefly, gets out, goes to the backseat, and then
19 goes back to the trunk.
20 A **Correct.**
21 Q And just assuming -- using my table as
22 kind of like the vehicle, with the driver's seat
23 and the passenger's seat, if it was parked here,
24 to the rear would be the apartment buildings?
25 A **Yes.**

1 Q And to the front would be that roadway
2 that we saw on that map?
3 A **Yes.**
4 Q And then if I'm sitting here, you would
5 have been to the left of counsel's table,
6 correct?
7 A **Yes.**
8 Q Okay. Robertson's in the trunk area.
9 Then where does he go?
10 A **He -- he's in the trunk area, and he's --**
11 **it looks like he's talking. I can't -- I**
12 **couldn't tell 'cause it is a little bit darker on**
13 **that side, whereas to the front it was lighter.**
14 **So he's standin' there pretty much from**
15 **that point on the majority of the time.**
16 Q All right. Does a third person enter the
17 situation?
18 A **Yes.**
19 Q Tell us about that.
20 A **An unknown black female had come walking**
21 **onto -- the road that his car's parked on, backed**
22 **in, it's called Sumner Road.**
23 Q Excuse me.
24 A **Sumner.**
25 Q S-u-m-n-e-r.

35

1 A Yes, sir.
 2 Q Okay.
 3 A The road I'm on is 15th Street, next to
 4 12 Row.
 5 She walks from -- I'm not sure where,
 6 either an apartment building, a vehicle, or
 7 whatever further down. She comes walking up. I
 8 see Sellers, Mr. Sellers, exit the vehicle, walk
 9 to her, which is pretty much directly underneath
 10 the streetlight, the glow of the street there
 11 underneath.
 12 Q Okay.
 13 A I seen them havin' a conversation. And
 14 Mr. Robertson was still in the back of the car.
 15 Q So if this car -- this is the car, my
 16 table. Driver's seat on at least my left, the
 17 passenger's on the right.
 18 Sellers gets out, and in which direction
 19 would he go to have his conversation with the
 20 female?
 21 A Pretty much directly forward and a little
 22 bit over to about where -- the other side of the
 23 courtroom.
 24 Q Over this way.
 25 A Yes.

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1 Q Would this be that roadway then?
 2 A Yes.
 3 Q Was he actually in the roadway with her?
 4 A Yes.
 5 Q All right. And then you would have been
 6 in that direction? I'm pointing towards the jury
 7 area.
 8 A Yes.
 9 Q Okay. And that's where you are in the
 10 vehicle.
 11 A Yes.
 12 Q All right. He has a discussion with her.
 13 How long is this discussion, approximately?
 14 A It's not very long. Maybe a minute.
 15 Not -- not even that.
 16 Q Do you see any kind of hand-to-hand
 17 transaction of any sort?
 18 A No.
 19 Q Okay. Does that conversation end?
 20 A Yes.
 21 Q And what happens next?
 22 A She -- both Mr. Sellers and the female
 23 walk back to the vehicle. Mr. Sellers gets into
 24 the passenger's seat to where he was sitting
 25 before, and the female gets in the back.

37

1 Q And is this a four-door vehicle?
 2 A Yes.
 3 Q Okay. She gets in the back. He gets in
 4 the passenger's seat. What's the next thing that
 5 happens?
 6 A Meanwhile, once those individuals were
 7 walking to the vehicle, I confirmed they were
 8 getting into that vehicle, my suspicion was that
 9 one of them was Corey Sellers.
 10 I had contacted the other Street Crime
 11 units who were close by. While they were
 12 responding, simultaneously as the units arrived
 13 to the vehicle, she had been entering the
 14 backseat.
 15 I had already pulled out, came to the
 16 front.
 17 Q When you say you pulled out and came to
 18 the front, are you referring to the front of --
 19 A His vehicle.
 20 Q -- Mr. Robertson's vehicle?
 21 A Yes.
 22 Q Okay. Other Street Crime units, are they
 23 saturating that specific area?
 24 A Yes. The whole idea was to prevent
 25 anybody takin' off in the vehicle to harm

38

1 anybody.
 2 Q Why is that?
 3 A Because every time we stop -- 90 percent
 4 of the time we stop somebody, they take off
 5 running, with no regards to safety.
 6 Q In other words, in a vehicle.
 7 A Yes.
 8 Q Is it safer to stop somebody -- this is
 9 gonna be a dumb question. But is it safer to
 10 stop somebody outside a vehicle on foot as
 11 compared to them behind the driver's --
 12 A Yes. I'd --
 13 Q -- wheel?
 14 A I'd rather have someone run if they're
 15 gonna do anything, because they're not gonna hurt
 16 a child or somethin'.
 17 Q You made the decision to make the move.
 18 A Yes.
 19 Q What happens next?
 20 A As we pulled up, I focused my attention
 21 on the vehicle. As Mr. Sellers exited the
 22 vehicle to run, he ran south in between 15 and 16
 23 Row.
 24 I had my eyes on the female, pulled my
 25 weapon due to Mr. Sellers running. She had put

1 her hands up right away.
 2 **Officer Ishman and Fustine had approached**
 3 **Mr. Robertson, who was still right behind his**
 4 **vehicle.**
 5 Q Okay. Let's go through this slowly.
 6 You approach from the front of the
 7 vehicle --
 8 A **Yes.**
 9 Q -- in your car.
 10 A **Yes.**
 11 Q Is this somethin' that slowly develops or
 12 is this a pretty quick movement?
 13 A **It's quick.**
 14 Q Okay. Other officers, do they also come
 15 in at that point?
 16 A **Yes.**
 17 Q The female, I believe -- did you testify
 18 that she was just getting in at this point, when
 19 you guys first move in?
 20 A **Yes.**
 21 Q Okay. You get out of your vehicle.
 22 Mr. Sellers, does he get out of his passenger's
 23 seat?
 24 A **Yes.**
 25 Q And where does he run? Point me in the

1 Q Was he able to apprehend him?
 2 A **Yes.**
 3 Q How far after this general location are
 4 we talking?
 5 A **About halfway up the length of the row.**
 6 **About halfway up between 15 and 16, on the left**
 7 **side.**
 8 Q Is Mr. Sellers brought back to where the
 9 car is?
 10 A **Not at the time. I actually approached**
 11 **to confirm who it was after he was placed in**
 12 **custody.**
 13 Q So did you walk down back this way to
 14 confirm where he was apprehended?
 15 A **Yes, after I released the female.**
 16 Q Okay. We'll get to that.
 17 Female is in the back -- backseat,
 18 passenger's side.
 19 A **Yes.**
 20 Q You're up at the front part of the car?
 21 A **Yes.**
 22 Q What's -- what are you specifically
 23 doing? You can show the jury what you're doin'.
 24 A **I'm standing pretty much right where the**
 25 **water container is --**

1 direction that he's running.
 2 A **To the rear.**
 3 Q He runs towards the back of the
 4 courtroom.
 5 A **Yes.**
 6 Q Okay. But -- I'm just using the
 7 courtroom, obviously, as an example.
 8 What does the female in the backseat do?
 9 A **As he's gettin' out to run, she just puts**
 10 **her hand right up.**
 11 Q And what about the defendant? Where's he
 12 located at this point?
 13 A **Exactly where you're standing, to the**
 14 **rear of his vehicle, on the sidewalk.**
 15 Q Outside the vehicle.
 16 A **Correct.**
 17 Q What does he do?
 18 A **I didn't see him because my focus was on**
 19 **her and Mr. Sellers.**
 20 **From what I was told by the other**
 21 **officers, he just put his hands up and was**
 22 **detained.**
 23 Q Let's start with Mr. Sellers. He runs
 24 this way. Do you know who chases after him?
 25 A **Yes. Officer Fustine.**

1 MR. ZAWISKY: Okay. So he's referring --
 2 THE WITNESS: -- in the middle of the
 3 row --
 4 MR. ZAWISKY: -- for the record, to the
 5 water pitcher on counsel's desk.
 6 THE WITNESS: And I had my weapon pulled.
 7 I could see pretty much everything up top and her
 8 left side, and her hands are up.
 9 And I come over, open the door. I see
 10 inside the vehicle. Light's -- it's all lit up.
 11 BY MR. ZAWISKY:
 12 Q So you come back over -- or you come over
 13 to the passenger's side.
 14 A **Yes, where she's at.**
 15 Q You open the backdoor or the front door?
 16 A **I opened the backdoor, where she's at.**
 17 Q And where -- how were her hands? When
 18 you were right there, how were her hands?
 19 A **The whole time, they're up.**
 20 Q Okay. What do you do specifically at
 21 this point?
 22 A **I direct her out. I confirm she's a**
 23 **female. I'm not looking for a female; I'm**
 24 **looking for a male who's to be wanted. I can see**
 25 **where she's sitting. Nothing that would be**

1 **alarming to me.**
 2 Q How was she dressed?
 3 A **She was dressed like she was gonna go to**
 4 **a club or a bar, wearing a skintight skirt that**
 5 **was real, real high, and it was just barely**
 6 **covering her chest. And she was also about, I'd**
 7 **say, around a hundred pounds. Very tiny.**
 8 Q Was the whole outfit rather tight to the
 9 body?
 10 A **Yes.**
 11 Q Okay.
 12 A **I could see that when they were talkin'**
 13 **on the street.**
 14 Q She gets out of the car. Do you let her
 15 go?
 16 A **Yes.**
 17 Q Okay. Now, did you suspect her of any
 18 criminal activity at that point?
 19 A **No.**
 20 Q Did you find any kind of drugs up to that
 21 point?
 22 A **No. If she made any type of movements**
 23 **that would have alarmed me, I would have kept her**
 24 **and detained her.**
 25 Q Why are you able to detain somebody if

1 A **Yes.**
 2 Q Okay. She is permitted to leave. What
 3 about Kashif Robertson? What goes on with him?
 4 A **He's temporarily detained. Two reasons:**
 5 **safety, and because we weren't sure who's who.**
 6 Q At that point you don't know who's Corey
 7 Sellers.
 8 A **Correct. People like to say false names.**
 9 **I get that a lot. He's -- I don't know who he is**
 10 **right away until I approach him and find out it**
 11 **is Kashif Robertson. But again, I don't know**
 12 **that for sure until we see IDs and verify on**
 13 **computers.**
 14 **I then walk over to Mr. Robertson to see**
 15 **who he is.**
 16 Q Is he placed in handcuffs?
 17 A **Yes.**
 18 Q And just to be clear, are we talking
 19 about the individual seated to the right -- to my
 20 right of defense counsel?
 21 A **Yes, wearing the brown suit.**
 22 MR. ZAWISKY: Okay. For the record, he's
 23 identified the defendant.
 24 BY MR. ZAWISKY:
 25 Q Kashif Robertson is detained in

1 they make furtive movements?
 2 A **For safety, and destroying evidence or**
 3 **tampering with evidence.**
 4 Q At that point in time, legally, can you
 5 restrict her movement?
 6 A **No.**
 7 Q Okay. She's let go, correct?
 8 A **Correct.**
 9 Q She's not identified.
 10 A **No.**
 11 Q All right. This area where you're at,
 12 this area of Hall Manor, is it a high-crime area?
 13 A **Yes. Just the next row over we had a**
 14 **SWAT team shootout with an individual that ended**
 15 **up taking his life, I believe.**
 16 Q High-drug-trafficking area?
 17 A **Yes.**
 18 Q Have you made numerous arrests in this
 19 area for drug possession?
 20 A **Yes.**
 21 Q Drug dealing?
 22 A **Yes.**
 23 Q Violent crime?
 24 A **Yes.**
 25 Q Gun crime?

1 handcuffs.
 2 A **Yes.**
 3 Q Is he seated down or does he stand up?
 4 A **He's been seated down --**
 5 Q Okay.
 6 A **-- due to --**
 7 Q Where is he seated down at this point?
 8 A **Right pretty much where he was standing,**
 9 **on the edge of the sidewalk, to where he can put**
 10 **his feet down a little more comfortable --**
 11 **instead of sitting Indian style, he can put his**
 12 **feet over the edge -- and sitting on the edge of**
 13 **the curb, the sidewalk.**
 14 Q So in other words, the roadway's in front
 15 of the table/car?
 16 A **Yes.**
 17 Q And in the back of the car is there a
 18 curb?
 19 A **Yes, the whole way around along the rows.**
 20 Q And then grass and rows.
 21 A **Yes.**
 22 Q So he's seated back in this area,
 23 correct?
 24 A **Yes.**
 25 Q Okay. Handcuffed up front or back?

1 A **In back.**
 2 Q Is that standard?
 3 A **Yes.**
 4 Q All right. Do you guys make an attempt
 5 to identify him at that point?
 6 A **Yes. I believe Officer Hammer did.**
 7 Q All right. During this attempt to
 8 identify him, tell us what takes place.
 9 A **I walked over to him. I believe he was**
 10 **talking to Officer Hammer, and I'm not sure which**
 11 **PO was standin' by with him. Officer Hammer took**
 12 **his identification, went to his car as I stood by**
 13 **behind him. I believe Mr. Robertson was unaware**
 14 **that I was behind him because --**
 15 Q Okay. Let's -- let's do this: Let's
 16 paint it out.
 17 I'm the defendant. I'm on the curb here.
 18 A **Yes.**
 19 Q Hammer's talkin' to him. Where's Hammer?
 20 A **Directly in front of him.**
 21 Q All right. And where are you?
 22 A **Directly behind him.**
 23 Q Okay.
 24 A **A little bit over, but behind you.**
 25 Q Hammer goes away towards his squad car to

1 **onto the street part. His front leg, right --**
 2 **yeah, his right leg and foot were also hangin'**
 3 **off. The majority of his left side was over the**
 4 **edge.**
 5 Q Okay. So if I'm back in this area, this
 6 is my left foot, would he have been leaning
 7 towards this way?
 8 A **No.**
 9 Q All right.
 10 A **The other way.**
 11 Q The other way. This way.
 12 A **Yes.**
 13 Q Okay.
 14 A **Yes.**
 15 Q You're back here.
 16 A **Yes. But it's more turned, because his**
 17 **car's parked this way and the sidewalks go this**
 18 **way.**
 19 Q So he's more like this?
 20 A **Yes.**
 21 MR. ZAWISKY: For the record, I'm just
 22 angled more towards the car.
 23 THE WITNESS: Yes.
 24 BY MR. ZAWISKY:
 25 Q All right. Leaning towards the right.

1 at least use the computer system?
 2 A **Which is parked back over this way.**
 3 Q And your pointing to the area where the
 4 clerk is?
 5 A **Yes.**
 6 Q The defendant's there seated in front of
 7 you. He would not have been in view of you,
 8 correct?
 9 A **Correct.**
 10 Q Okay. Would he have been in view of
 11 Hammer?
 12 A **Yes.**
 13 Q Was Hammer facing him?
 14 A **Yes -- at first, yes, and then Hammer**
 15 **walked away. And then there was another PO there**
 16 **with him.**
 17 Q Hammer walks away or at least looks away.
 18 What about the PO? Does he look away?
 19 A **No. I believe he's talking to him or --**
 20 **I'm not sure exactly what was said. There was**
 21 **conversation.**
 22 Q Tell us what happens at this point.
 23 A **I could see Mr. Robertson was kind of**
 24 **over the edge -- the sidewalk's here. His left**
 25 **butt cheek, leg, and foot were hangin' off, down**

1 A **Yes.**
 2 Q All right. What does he do?
 3 A **I can see his hands. They were cuffed,**
 4 **and I could see him movin' his hand. First, what**
 5 **caught my attention is, I thought maybe the cuffs**
 6 **were too tight, because we do get complaints that**
 7 **they're hurting. But I could see his left pinky**
 8 **reaching into his front left pocket, tryin' to**
 9 **push down a plastic bag that was stickin' out.**
 10 **It was a portion of it stickin' out.**
 11 Q As an officer with eight, nine years'
 12 experience, have you encountered plastic baggies
 13 out on the street?
 14 A **Yes.**
 15 Q What are they typically used to store?
 16 A **Illegal narcotics.**
 17 Q You see this. Does that raise your
 18 intention?
 19 A **Yes.**
 20 Q Or attention? Excuse me.
 21 A **Yes.**
 22 Q All right. What do you do?
 23 A **I put my flashlight on it. I confirm it**
 24 **is a plastic baggie. I asked Mr. Robertson what**
 25 **he's reachin' for. And he said nothin'. I went**

1 over to grab it. There was a portion stickin'
2 out. I just grabbed it with my two fingers and
3 popped it out. And it was identified as a
4 possible -- white rocky substance, and it looked
5 like crack cocaine.

6 Q I'm gonna show you what's been marked as
7 Commonwealth's Exhibit 2.

8 Can you please identify that for us?

9 A This would be the bag that I saw him
10 trying to shove into his pocket, with the crack
11 cocaine.

12 Q Okay. Was that seized?

13 A Yes.

14 Q Was it sent to the Pennsylvania State
15 Police for testing?

16 A Yes, and field tested as well.

17 MR. ZAWISKY: Okay. Your Honor, at this
18 point there's a stipulation of fact, which means
19 that the parties agree to the following fact:
20 That that exhibit, Commonwealth's Exhibit 2 --

21 THE WITNESS: 2.

22 MR. ZAWISKY: -- was sent to the
23 Pennsylvania State Police Bureau of Forensic
24 Services; that it was tested by Forensic
25 Scientist Ann Wagner, that it was weighed, and

1 that it weighed 5.8 grams; and that it contained
2 cocaine as base, as the base.

3 That is the stipulation of fact.

4 THE COURT: And ladies and gentlemen,
5 what a stipulation is, is basically the two
6 attorneys have agreed that this individual does
7 not have to come in from the Pennsylvania State
8 Police to testify to exactly what he just told
9 you, the 5.8 grams and that it was tested and
10 came back as cocaine.

11 BY MR. ZAWISKY:

12 Q Okay. Now, you find cocaine right in the
13 defendant's pocket. Do you do a search incident
14 to arrest?

15 A Yes.

16 Q What, if anything, else do you find on
17 the defendant?

18 A In his front right pocket I found a large
19 amount of U.S. currency, totaling \$905; also a
20 and four plastic baggies, two of
21 corners torn off and two of which
22 y the corners that had been torn off.
23 Let's go through this slowly. The
24 e specifically was that located?
25 ie right front pocket.

1 Q Okay. So --

2 A That's your left.

3 Q Yeah, but you're gettin' a little head of
4 me. Normally I'm the one jumpin' the gun.

5 Crack cocaine's found in the left pocket?

6 A Yes.

7 Q In the right pocket, how much U.S.
8 currency?

9 A 905.

10 Q Dollars.

11 A Yes.

12 Q Paper money.

13 A Correct.

14 Q In that very same pocket, you indicated
15 some baggies were found?

16 A Yes.

17 Q Okay. I'm gonna present you with what's
18 been marked as Commonwealth's Exhibit 3, which is
19 an envelope containing several objects.

20 Would be please identify this for us?

21 A These would be the plastic sandwich bags.

22 Q Okay.

23 A And then here's the two corners that
24 looked like they were torn off of similar plastic
25 bags as these.

1 Q Okay. Let's start with the two big ones.
2 Do these appear to be unmutilated, unripped,
3 standard sandwich baggies?

4 A Yes.

5 Q Okay. And in addition to those you found
6 two corner -- what appear to be corner ties of
7 sandwich baggies --

8 A Yes.

9 Q -- correct?

10 Okay. Those were found in the right
11 pocket with the cash.

12 A Yes.

13 Q Was anything in these baggies?

14 A No.

15 Q Okay. In addition, there's
16 Commonwealth's Exhibit 3. There are two other
17 items in this. What are those?

18 A This would be one of the cell phones.
19 This is the cell phone that was found with the
20 bags and the money inside his pocket. And this
21 would be a cell phone that he had hanging on him,
22 around his neck at the time, out in plain view.

23 MR. ZAWISKY: Your Honor, I'd ask that
24 Commonwealth's Exhibits 2 and 3 be moved into
25 evidence. And I'd ask that I publish them by

1 walking them by the jury.
 2 THE COURT: Any objection?
 3 MR. McQUILLAN: No objection, Your Honor.
 4 THE COURT: All right.
 5
 6 (The evidence was
 published to the jury.)
 7
 8
 9 BY MR. ZAWISKY:
 10 Q If you could return those to the Exhibit
 11 Number 3 envelope. Not the cocaine though,
 12 please. Sorry. That's a separate exhibit.
 13 You find those items on the defendant.
 14 Do you then obtain a search warrant for the
 15 defendant's vehicle?
 16 A Yes.
 17 Q And did you obtain that in the early
 18 morning hours of that evening?
 19 A No. That would have been due to the time
 20 of day. The vehicle was secured into a secure
 21 facility for a search warrant to be done later.
 22 Q In other words, it was towed to a secured
 23 facility?
 24 A Yes.
 25 Q And then it was searched pursuant to a

1 there with full rounds, one in the chamber.
 2 Q Let's start with Commonwealth's
 3 Exhibit 4, which consists of several items.
 4 If you could identify the first item.
 5 A The first item is the registration card
 6 with Mr. Robertson's signature, his information,
 7 and the vehicle's information.
 8 Q And that would have been gone or been
 9 connected to the vehicle which was observed that
 10 night and which was searched.
 11 A Yes.
 12 Q Okay. The second item --
 13 And that would have been found
 14 specifically where?
 15 A In the glove box.
 16 Q I'm gonna hand you a second item. Would
 17 you please identify that?
 18 A That's the empty Newport box that
 19 contained the suspected cocaine.
 20 Q Specifically, I'll direct your attention
 21 to Commonwealth's Exhibit 6.
 22 Is this the other, second baggie of
 23 suspected cocaine that was found in that Newport
 24 box?
 25 A Yes.

1 search warrant the next day.
 2 A Yes.
 3 Q The next day at approximately 4:45 p.m.,
 4 is that when the search warrant would have been
 5 executed?
 6 A Yes.
 7 Q All right. What, if anything, was found
 8 in the vehicle?
 9 A In the middle console was found a
 10 Newport -- empty Newport cigarette box that
 11 contained a white powdered substance, a bag
 12 filled with it, that resembled cocaine. That was
 13 in the middle console, along with a digital scale
 14 and a small bag of green leafy substance that
 15 appeared to be marijuana as well.
 16 Further search found in the glove box a
 17 registration card showin' the vehicle's make,
 18 model, year, ownership, belonging to Kashif
 19 Robertson, and the vehicle's tag which was the
 20 tag that was on that vehicle.
 21 Further search found a silver-and-black
 22 Beretta handgun that had been in the right --
 23 front right passenger pocket -- backseat pocket.
 24 I'm sorry. The pocket that's located to the back
 25 of the right front passenger's seat. It was in

1 MR. ZAWISKY: Okay. Your Honor, there's
 2 a stipulation of fact regarding that second
 3 baggie of cocaine:
 4 That it was sent to the Pennsylvania
 5 State Police; and that Ann Wagner, Forensic
 6 Scientist at the Pennsylvania State Police Bureau
 7 of Forensic Services, weighed it and tested it;
 8 that it weighed 3.9 grams and contained -- excuse
 9 me, I apologize. That item weighed .34 grams and
 10 contained cocaine as base.
 11 THE WITNESS: Further --
 12 MR. ZAWISKY: I believe that there's a
 13 stipulation of fact.
 14 MR. McQUILLAN: That's correct, Your
 15 Honor.
 16 THE COURT: Okay. Thank you.
 17 THE WITNESS: And further --
 18 BY MR. ZAWISKY:
 19 Q So -- sorry. This was found in the
 20 cigarette box?
 21 A Yes.
 22 Q And I'm referring to Commonwealth's
 23 Exhibit 6.
 24 A Yes.
 25 Q What, if anything, else was found in that

1 cigarette box?

2 **A A sandwich bag, the same as the ones that**

3 **were found in his pocket. This one has a torn**

4 **end to it which would be similar to the shorter,**

5 **smaller ones that are common to be used to twist**

6 **off with drugs put into them.**

7 **Q** Okay. So this is a sandwich baggie that

8 appears to have a corner ripped off.

9 **A Yes.**

10 **Q** This was found in the cigarette pack with

11 the second baggie of cocaine.

12 **A Yes.**

13 **Q** Okay. And one other item.

14 Commonwealth's Exhibit 4, can you please identify

15 that?

16 **A This is the digital scale that was fully**

17 **operational at the time, and I knew it was fully**

18 **operational by turning it on long enough to show**

19 **the zeros. And it's commonly used to weigh the**

20 **illegal narcotics.**

21 **MR. ZAWISKY:** Your Honor, I would ask

22 that Commonwealth's Exhibit 4, which consists of

23 these items, as well as Commonwealth's Exhibit 6

24 be moved into evidence and published to the jury.

25 **MR. McQUILLAN:** No objection.

1 **A Yes.**

2 **MR. ZAWISKY:** Okay. There's a

3 stipulation of fact that that marijuana weighs

4 3.9 grams. That was sent to the Pennsylvania

5 State Police. Same scientist tested it and,

6 again, weighed 3.9 grams and contained marijuana.

7 **MR. McQUILLAN:** That's accurate, Your

8 Honor.

9 **THE COURT:** Thank you.

10 **BY MR. ZAWISKY:**

11 **Q** All right. Officer, you referred to

12 finding a handgun. I'm gonna show you what's

13 been marked as Commonwealth's Exhibit 7.

14 Could you please identify that for us?

15 **A This would be the silver-and-black**

16 **Beretta that was fully loaded and found in the**

17 **pocket of the front seat.**

18 **MR. ZAWISKY:** And this has obviously

19 **been made safe. It is not loaded at this time,**

20 **Your Honor, for everyone's safety.**

21 **THE COURT:** Thank you.

22 **BY MR. ZAWISKY:**

23 **Q** That is the handgun, correct?

24 **A Yes.**

25 **Q** And at the time, it was found loaded?

1 **THE COURT:** They're admitted and

2 published.

3 **MR. ZAWISKY:** Specifically, I'm going to

4 walk with Commonwealth's Exhibit 6 and

5 Commonwealth's Exhibit 4, which is the torn

6 plastic sandwich baggies.

7

8 (The evidence was

9 published to the jury.)

10

11 **BY MR. ZAWISKY:**

12 **Q** Officer, you also found some marijuana in

13 the center console?

14 **A Yes.**

15 **Q** I'm gonna show you what's been marked as

16 Commonwealth Exhibit 5.

17 Would you please identify that?

18 **A That would be the green, leafy substance**

19 **that was later identified as marijuana that was**

20 **next to the scale and the Newport box, inside the**

21 **middle console.**

22 **Q** And the defendant was not charged with

23 possession of marijuana?

24 **A No. That was a mistake.**

25 **Q** Oversight by yourself?

1 **A Yes.**

2 **Q** And was a magazine in -- in the gun?

3 **A Yes.**

4 **Q** And was a round in the chamber?

5 **A Yes.**

6 **Q** What does that mean?

7 **A That it was accessible to use at any**

8 **time. Could pull the trigger, and it was gonna**

9 **be --**

10 **Q** In other words, if I have a

11 semi-automatic handgun --

12 I'm assuming you actually carry a

13 semi-automatic handgun. Correct?

14 **A Yes.**

15 **Q** So you're familiar with how they operate?

16 **A Yes.**

17 **Q** If I were to load this, I put the

18 magazine in the bottom of it?

19 **A Yes.**

20 **Q** And I would rack --

21 **A Rack, yes.**

22 **Q** -- rack the chamber -- excuse me, rack

23 the slide, and that would put a round in the

24 chamber, and it would be ready to fire.

25 **A Yes.**

1 Q And that's how this gun appeared back
2 then.
3 A **Yes.**
4 Q Also with the gun, are those the rounds
5 in that separate envelope?
6 A **Yes.**
7 Q All right.
8 A **And the magazine.**
9 Q Specifically, other than the registration
10 and other than the handgun, all those items were
11 found in the center console.
12 A **Yes.**
13 Q And if I'm seated at the center -- excuse
14 me. If I'm seated at the driver's seat, in the
15 driver's seat, where is that center console in
16 relationship to me?
17 A **Right to your right arm.**
18 Q All right. Right next to me.
19 A **Yes.**
20 Q Okay. The handgun, specifically where
21 was that located?
22 A **In the pocket to the back of the right**
23 **front passenger's seat, another foot over to your**
24 **right arm.**
25 Q So I'm seated at counsel table in my

1 A **Yes.**
2 MR. ZAWISKY: Your Honor, there is also
3 a stipulation that that handgun was sent to the
4 Pennsylvania State Police, was tested for
5 operability, and it is an operable firearm.
6 MR. McQUILLAN: That's correct, Your
7 Honor.
8 BY MR. ZAWISKY:
9 Q Officer, was -- are you familiar with
10 crack cocaine use paraphernalia?
11 A **Yes.**
12 Q What is it?
13 A **Items used to ingest into your system,**
14 **such as needles, crack pipes or stems; and**
15 **objects made to smoke it, marijuana bowls used to**
16 **smoke it.**
17 Q In other words, drug paraphernalia is
18 something that either can store drugs --
19 A **Yes.**
20 Q -- or it can be something which is used
21 to ingest drugs.
22 A **Yes.**
23 Q Various drugs have various forms of drug
24 paraphernalia.
25 A **Yes.**

1 seat. To the right of me is a seat. Would this
2 have been similar, at least --
3 A **Yes.**
4 Q -- in location, as to the passenger's
5 seat?
6 A **Yes.**
7 Q And I'm pointing to the back of that
8 seat. Is this the area where that gun would have
9 been found?
10 A **Yes.**
11 Q Is there, like, a little -- almost like a
12 little envelope-type looking area here that you
13 could put something in?
14 A **Yes.**
15 Q Okay. How was the gun placed in there?
16 In other words, how was the gun situated in that
17 location?
18 A **To where the handle was towards you, the**
19 **driver's side, and the barrel was pointing**
20 **downward, away.**
21 Q Would it have been easy for me to grab
22 the gun by the handle and pull it out?
23 A **Yes.**
24 Q That handgun was submitted to the
25 Pennsylvania State Police?

1 Q Okay. Are you familiar with a crack
2 pipe?
3 A **Yes.**
4 Q Are you familiar with crack stems?
5 A **Yes.**
6 Q Are those items which are used to ingest
7 crack cocaine?
8 A **Yes.**
9 Q Okay. Did you find any drug use
10 paraphernalia on the defendant's person?
11 A **No.**
12 Q Did you find any drug use paraphernalia
13 found in the defendant's vehicle?
14 A **No.**
15 Q When you execute a search warrant on a
16 vehicle, is this a cursory, just kind of
17 look-around search, or do you guys look in the
18 nooks and the crannies?
19 A **We looked everywhere, tried to tear it**
20 **apart.**
21 Q And not one item of drug use
22 paraphernalia was found.
23 A **No. In fact, I believe we seized that**
24 **vehicle, so we really would have tore it up.**
25 MR. ZAWISKY: Your Honor, I believe I

1 moved all those exhibits into evidence. If I
2 have not, I will. And with that, I will --
3 Excuse me. Commonwealth's Exhibit 7 I
4 believe needs to be moved into evidence.
5 THE COURT: Okay.
6 MR. ZAWISKY: I have no further questions
7 for this witness.

8 THE COURT: Mr. McQuillan?

9 MR. McQUILLAN: Thank you, Your Honor.
10 With the Court's indulgence.

11
12 CROSS EXAMINATION

13
14 BY MR. McQUILLAN:

15 Q Good afternoon, Officer.

16 A **Good afternoon.**

17 Q When you arrive at Hall Manor that
18 evening, it's dark out.

19 A **Yes.**

20 Q What's the weather like?

21 A **Clear. Cool.**

22 Q Clear, cool, and dark.

23 A **Yes.**

24 Q Okay. And you are in a vehicle, which
25 I'm gonna show you -- actually, you have up there

1 **many --**

2 Q Oh, in your 30 car lengths.

3 A **Yeah.**

4 Q Okay. Fair enough.

5 So you're about 30 car lengths away, and
6 it's dark out, right?

7 A **Yes.**

8 Q And you're with officer -- Probation
9 Officer Banning.

10 A **Yes.**

11 Q And the target of your investigation is
12 not Mr. Robertson. Correct?

13 A **Correct.**

14 Q Your target is Corey Sellers.

15 A **Yes.**

16 Q And Corey Sellers is wanted on a warrant.

17 A **Yes.**

18 Q And after you received information that
19 Corey Sellers is in that area, you go there, and
20 that's who you're lookin' for.

21 A **Yes.**

22 Q At that point do you have any idea what
23 Corey Sellers looks like?

24 A **No, not at the time.**

25 Q Your description is, he's a young black

1 the Commonwealth exhibit showing a pictorial of
2 Hall Manor.

3 What's that exhibit marked, sir?

4 A **1.**

5 Q Okay. In Commonwealth 1, count for me
6 the approximate car widths from where you are to
7 where you're observing this green Chrysler.

8 A **Approximately 30?**

9 Q Approximately 30 car lengths away.

10 And also in between those, where you are

11 to where this green car is, there's a span of
12 curb or lawn around the corner where cars
13 couldn't park, correct?

14 A **I'm not -- I'm not sure how you're askin'**
15 **that. Are you talkin' about across the street?**

16 Q Where -- no. I'm talkin' about, in your
17 line of sight there is 30 car lengths or so.

18 There's also -- in the middle of those cars,
19 there's an area of grass and curb that --

20 A **Oh.**

21 Q -- cars can't park.

22 A **Yes. I --**

23 Q So in other words, how far would you say
24 that was?

25 A **I counted -- I roughly estimated how**

1 male?

2 A **I wouldn't even say young. I just -- at**
3 **the time we knew he was a black male --**

4 Q Okay.

5 A **-- not heavy.**

6 Q Okay. You have no reason to know what
7 Kashif Robertson looks like because you're not
8 there to look for him, right?

9 A **No.**

10 Q And you have no idea what he looks like.

11 A **No.**

12 Q When you first see the two black males
13 approach the car, do you know approximately at
14 what time that is?

15 A **It's somewhere between 12:30 and one**
16 **o'clock. I believe 12:30. After midnight I**
17 **believe I started setting up, posting online.**

18 Q Okay. And when these two black gentlemen
19 approach the vehicle, they get in the car.

20 A **Yes.**

21 Q You don't know who they are at this
22 point, correct?

23 A **No.**

24 Q On your direct examination you were
25 indicating Corey Sellers gets in the passenger's

1 seat, Mr. Robertson gets in the driver's seat.
 2 Right?
 3 A Yes.
 4 Q But you learn that after the fact. At
 5 the time you just see two black gentlemen get in
 6 the vehicle.
 7 A Yeah. **Pretty much everything --**
 8 **everybody was identified after everything**
 9 **happened, the running and all that.**
 10 Q So you had no idea who was who --
 11 A No.
 12 Q -- as it unfolded.
 13 A No.
 14 Q So Mr. -- what turns out to be
 15 Mr. Sellers gets in the passenger's seat.
 16 A Yes.
 17 Q Mr. Robertson, my client, gets in the
 18 driver's seat.
 19 A Yes.
 20 Q And they're in there for a minute or so.
 21 A Yes.
 22 Q You don't approach the vehicle at this
 23 point.
 24 A No. **I was waitin' for all the other**
 25 **units to come.**

1 A **If she had a handbag, it would be very**
 2 **distinctive, the size. If she had a purse, it**
 3 **was about the size of her hand.**
 4 Q Well, you're -- you're speculating,
 5 because you have no idea if she had a purse or a
 6 handbag, right?
 7 A **If she had a purse -- she had nothing on**
 8 **her except the outfit.**
 9 Q You did not see a purse, correct?
 10 A No.
 11 Q And you did not see a handbag.
 12 A No.
 13 Q But you don't know if she had one or not.
 14 A No.
 15 Q When -- you never asked her for
 16 identification at any point, correct?
 17 A **Correct.**
 18 Q So you -- after you see Corey Sellers,
 19 the target of your investigation, speaking with
 20 this young lady who you don't know who she is,
 21 they both get into the vehicle, correct?
 22 A Yes.
 23 Q And I'll use Mr. Zawisky's makeshift car
 24 here in the courtroom, his counsel table.
 25 So he -- Mr. Zawisky would be sitting

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1 Q And during this time, while you're
 2 waiting, this unknown black female approaches.
 3 A Yes.
 4 Q Mr. Sellers gets out of the car and goes
 5 to the street, where he speaks with her.
 6 A Yes.
 7 Q You're still 30 -- you're still 30 car
 8 lengths away.
 9 A Yes.
 10 Q And you indicate -- is it at that point
 11 you know what she's wearing?
 12 A Yes, **I can see -- she's pretty much**
 13 **standin' under the streetlight. I can see every**
 14 **detail about her except --**
 15 Q Do you know what kind of shoes she was
 16 wearing?
 17 A **High heels. I don't know what color.**
 18 Q What color was her purse?
 19 A **I didn't see her have a purse.**
 20 Q Do you know if she had a purse?
 21 A No.
 22 Q You don't know, do you?
 23 A No.
 24 Q Do you know -- do you know if she had a
 25 handbag?

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1 where my client was found --
 2 A **Initially, yes.**
 3 Q -- to be in.
 4 A Yes.
 5 Q Mr. Sellers was in the passenger's seat.
 6 A Yes.
 7 Q When the female and Mr. Sellers get into
 8 the car, she gets into the back passenger's seat,
 9 behind Mr. Sellers.
 10 A Yes.
 11 Q Okay. And at this point, when
 12 Mr. Sellers and the unknown black --
 13 She's a black female, correct?
 14 A Yes.
 15 Q -- unknown black female are sitting in
 16 the car, Mr. Robertson is not in the vehicle,
 17 correct?
 18 A **Correct.**
 19 Q And Mr. Robertson's outside the vehicle.
 20 A **Correct.**
 21 Q And how long would you say Mr. --
 22 Mr. Sellers and the unknown black female are
 23 sittin' in the car?
 24 A **Mr. Sellers got in first. He would have**
 25 **only been in a second or two. She had been**

1 standing for about that amount of time, like she
2 was havin' a conversation -- I don't know if it
3 was with Mr. Robertson -- as she was tryin' to
4 enter the door at the same time, and that's when
5 we had approached.

6 So as she was getting in, I was pulling
7 up. So she was probably in there, before I came
8 up, not even, I'd say, a second.

9 Q Where in your -- let me ask you this:
10 You've done a report with regard to this
11 investigation, correct?

12 A Yes.

13 Q And let me go back. You've been a police
14 officer for nine years. Correct?

15 A 13.

16 Q Oh, I'm sorry.

17 A Nine on patrol.

18 Q Nine on patrol. And you've been with
19 Street Crimes a year and a half. So you've been
20 a police officer 13 years.

21 A Yes.

22 Q And tell me about your training. Where
23 do you -- where do you go to school? How do you
24 become a police officer?

25 A Initially, here, trained at HACC,

1 Harrisburg Area Community College, which is where
2 the police academy is. You train there for six,
3 seven months.

4 I was trained in Fairfax, Virginia, as
5 well for two years, so their academy, as a deputy
6 sheriff.

7 Q Okay. And during that training you
8 learned how to write police reports, correct?

9 A Yes.

10 Q And you learned that it's important to be

11 accurate and concise in your police reports,
12 correct?

13 A Yes.

14 Q And you've been an officer a long time.
15 You've done thousands of reports.

16 A Yes.

17 Q And you pride yourself that you do
18 accurate and concise reports.

19 A Yes.

20 Q In no -- in this case, you did a report.
21 Right?

22 A Yes.

23 Q Just one report.

24 A Right. Initial crime report. Other
25 ones, like search warrant, property records, such

1 as that, they're not very long. But the initial
2 crime report would be one, yes.

3 Q And the initial crime report is where you
4 put all the details and specific information
5 about what you observed and who you see and what
6 you do.

7 A Yes.

8 Q Okay. Would you agree with me, nowhere
9 in your report does it mention anything about the
10 female being in the car for one second?

11 A Yes, it doesn't say that. Yes.

12 Q It does?

13 A No.

14 Q Does not?

15 A It does not.

16 Q Okay. And it has no description of her
17 clothing.

18 A No.

19 Q No description of a handbag.

20 A No.

21 Q And no description of any identification,
22 because you didn't ID her.

23 A Correct. No.

24 Q After -- well, let me ask you this: When
25 do you complete your report in this case, the

1 initial report where you put all the specific,
2 detailed information?

3 A The whole thing was completed that
4 afternoon, after the search warrant. I --

5 Q So -- go ahead.

6 A I had done the first half of it,
7 involving Mr. Sellers and what I had found so
8 far. And knowing that I had a search warrant to
9 do, I ended the report and then continued it
10 after I came back into work to do the search

11 warrant.

12 Q Would you agree with me that your report
13 says that it began at 4:39 a.m. and was finished
14 at 4:47 a.m.?

15 A The -- yeah. The C was started at 4:39?
16 If that's on there, yes.

17 Q And IC stands for initial crime.

18 A Yeah.

19 Q So that would have been four in the
20 morning, after the 12:30 incident.

21 A Yes.

22 Q Okay. And it was completed at 4:47 --

23 A Yes.

24 Q -- a.m.

25 Can you explain to me -- well, let me ask

1 you this: When did you do, then, the search
2 warrant?
3 **A The search warrant would have been later**
4 **that afternoon, when the judge was there.**
5 **Q** Same day, through the morning, into the
6 afternoon.
7 **A Yes. Started in the morning, went**
8 **throughout the evening.**
9 **Q** Okay. And you have to do what's called
10 an affidavit of probable cause for the search
11 warrant.
12 **A Yes.**
13 **Q** And you did that in this case.
14 **A Yes.**
15 **Q** And you'd agree with me that nowhere in
16 that affidavit of probable cause is there any
17 mention of this female at all.
18 **A No.**
19 **Q** And that search warrant was then executed
20 at what time?
21 **A I believe I swore to it at 4:15 in the**
22 **evening, and then I went over to the vehicle at**
23 **4:45 and began to search with the K-9 officer.**
24 **Q** Okay. So 4:45 p.m. the search is done --
25 **A Yes.**

1 **Q** Okay. The IC document only. So it's a
2 three-page document. And what -- what time does
3 that say --
4 Does that refresh your recollection? Is
5 that your initial crime report?
6 **A Yes.**
7 **Q** And what time does that reflect that that
8 was completed?
9 **A Well, it says, report officer. That**
10 **would be me, 108, Darrin Bates. 4-7, 2012.**
11 **Right after that it says the time, 0439.**
12 **That only initiates when I started it.**
13 **Q** Okay. That's when you made the report.
14 **A Yes.**
15 **Q** Okay. And it's not completed until the
16 following afternoon.
17 **A Yes.**
18 **Q** But at 4:39, you'd agree with me that you
19 had no idea of the contents of the car or the
20 search warrant or any of that.
21 **A Yeah.**
22 **Q** But it's all in there.
23 **A Like I said, I'll show you exactly where**
24 **I stopped.**
25 **Right here it says, Corey Sellers was**

1 **Q** -- and complete.
2 So how is it that all the information
3 from the search warrant is in your initial crimes
4 report that was completed at 4:47 a.m.?
5 **A I don't know where it says it would have**
6 **been completed. I would have left it open and**
7 **then added to it. You'd have to show me where it**
8 **says it's completed. I know where it says it**
9 **starts.**
10 MR. McQUILLAN: May I have this marked as
11 Defense Exhibit Number 1, please?

12
13 (Defense Exhibit No. 1
14 was marked for identification.)
15
16 BY MR. McQUILLAN:
17 **Q** Officer Bates, I'm showing you a
18 four-page document. Could you take a minute and
19 review that?
20 **A Yes.**
21 **Are you showing me the IC or the criminal**
22 **complaint?**
23 **Q** The IC.
24 **A Okay. This is part of the criminal**
25 **complaint.**

1 **placed into custody for his active warrant.**
2 **Sellers is being charged with flight to avoid**
3 **apprehension, resisting arrest.**
4 **If you read all my reports in my past, I**
5 **commonly end my reports with who was arrested and**
6 **why they were arrested, and then I put "no**
7 **further information" at the end.**
8 **Then it starts up, a search warrant was**
9 **completed and approved by DJ Lindsay at 1415**
10 **hours.**
11 **Therefore, everything after the**
12 **vehicle -- from the vehicle is on there.**
13 **Q** So it's your common practice -- it's your
14 common practice to start a report one -- at 4 in
15 the morning -- or whenever time you start it, and
16 just keep it open while you continue the
17 investigation and just add things to it?
18 **A I -- I did in this -- I do, have done it**
19 **before. But I did in this situation here because**
20 **of time of night he was gonna be arraigned. He**
21 **had to be arraigned in a certain amount of time.**
22 **I didn't want to have to send him to prison -- or**
23 **have -- let me rephrase that. Him being placed**
24 **on bail and possibly going to the prison, and**
25 **then having to go out and get him, bring him back**

1 if we found anything.

2 **So I was trying to get approval of my**

3 **supervisor at 4 in the morning. It's awful hard**

4 **to get. So I left it open, therefore, to wait**

5 **till I get the search warrant. When it came**

6 **down, he had already been arraigned.**

7 Q Okay. Now, going back to the actual

8 events of that evening, when you get there, how

9 many police officers and probation officers are

10 involved?

11 A **I believe there's eight of us on the**

12 **unit. I believe everybody was out there,**

13 **including -- almost everybody that was assigned a**

14 **PO, so probably six more POs.**

15 **So you're talkin' almost 13, 14 officers.**

16 Q Okay. And when you approached the

17 vehicle, Mr. Robertson's outside the car.

18 A **Yes.**

19 Q Mr. Sellers is in the car.

20 A **Yes.**

21 Q And the female's in the car.

22 A **Yes.**

23 Q And you're in the front of the car.

24 A **Yes.**

25 Q And it's -- there's a streetlight behind

1 said there was a shootout there --

2 A **Yes.**

3 Q -- or a standoff, or whatever you said.

4 A **And Mr. Sellers was runnin'.**

5 Q Okay. And Mr. Sellers was wanted.

6 A **Runnin'.**

7 Q I'm sorry. He was wanted too.

8 A **Yeah. I didn't know that was him --**

9 Q Okay.

10 A **-- but the guy was runnin'.**

11 Q And that leads me to my next question.

12 So Sellers then -- Mr. Robertson's

13 cooperating and listening to commands.

14 A ~~**Yes.**~~

15 Q Mr. Sellers' in the front seat. Female's

16 in the backseat.

17 A **Yes.**

18 Q Sellers then jumps out and runs.

19 A ~~**Yes.**~~

20 Q And Officer Fustine chases him.

21 A **Yes.**

22 Q Tazes him.

23 A **Yes.**

24 Q And apprehends him half a block away?

25 A **Yes.**

1 you.

2 A **Yes. That's off to the side, but it**

3 **would be the back of me.**

4 Q Would be on the curb behind --

5 A **Yes.**

6 Q -- the street.

7 A **Yes.**

8 Q Right?

9 And Officers Ishman and --

10 A **Fustine.**

11 Q -- Fustine approach Mr. Robertson and ask

12 him for identification.

13 A **Yes. I don't know if Fustine said**

14 **anything, but Officer Ishman definitely**

15 **approached him and asked for identification.**

16 **I believe that Officer Fustine was with**

17 **Officer Ishman, and he saw Mr. Sellers running,**

18 **and he actually chased after Mr. Sellers.**

19 Q And as Officers Ishman and Fustine

20 approach Mr. Robertson, Mr. Sellers and the

21 female are still in the vehicle at this time.

22 A **Yes. I believe that's what Mr. Sellers**

23 **saw, was the officers approaching Mr. Robertson.**

24 Q Okay. And you approach with your gun

25 drawn because it's a high-crime area, and you

1 Q In between the rows.

2 A **Yes.**

3 Q The female stays there.

4 A **Yes.**

5 Q Now, you said that you were paying

6 attention to the female, right?

7 A **Yes.**

8 Q And you could only see her from the

9 shoulders down.

10 A **Yes.**

11 Q Okay.

12 A **Shoulder up.**

13 Q I'm sorry. I apologize. The shoulders

14 up.

15 A **Yeah.**

16 Q And you're paying particular attention to

17 her.

18 A **Yes.**

19 Q And you were paying attention to her

20 because you didn't know if she had a gun.

21 A **I didn't -- I have somebody running. I**

22 **would do the same thing if there was five people**

23 **in the car.**

24 Q Right, because people have guns in that

25 area.

1 A **It's possible, yeah.**
 2 Q And she may have had a gun.
 3 MR. ZAWISKY: Objection. Calls for
 4 suspension.
 5 BY MR. McQUILLAN:
 6 Q Well, you had your gun drawn on her and
 7 your eyes trained on her because you were
 8 concerned about your safety and your fellow
 9 officers' safety.
 10 A **Yes.**
 11 Q Now, you said that you didn't detain her
 12 because you weren't allowed to under the law.
 13 A **Yes.**
 14 Q So -- and you didn't see her commit any
 15 criminal activity.
 16 A **No.**
 17 Q You didn't see Mr. Robertson commit any
 18 criminal activity either.
 19 A **No.**
 20 Q But you detained him.
 21 A **Yes. We weren't sure who he was.**
 22 Q And he was a black male.
 23 A **Yes.**
 24 Q Now, the gun then is found at a later
 25 time during the warrant.

1 Q Yeah.
 2 A **I'm sorry. I thought you said PSP.**
 3 **No. I did not send it for fingerprints.**
 4 Q Okay. The gun, after you find it,
 5 it's -- it's -- you disassemble or -- I don't know
 6 what the word is.
 7 A **Yes.**
 8 Q You take it apart.
 9 A **Yes.**
 10 Q And the part you take out is what's
 11 called the clip?
 12 A **Magazine clip.**
 13 Q Magazine clip.
 14 And then there's several rounds, bullets.
 15 A **Yes.**
 16 Q Were those -- was that -- could you show
 17 me the actual magazine that holds the bullets?
 18 A **Do you want me to open it up?**
 19 Q Yes.
 20 A **Okay.**
 21 Q And can you just show me that?
 22 That's the magazine clip that was in the
 23 gun.
 24 A **Yes.**
 25 Q And it had bullets in it.

1 A **Yes.**
 2 Q And the gun's found -- we've been through
 3 this -- in the backseat.
 4 A **Yes.**
 5 Q You indicate that the handle's pointing
 6 down -- or facing -- or the barrel's pointing
 7 down.
 8 A **Yes.**
 9 Q Correct?
 10 Where in any report or supplemental
 11 report or inventory is that in your notes? Do
 12 you have that?
 13 A **No.**
 14 Q Did you photograph that where you found
 15 it, when you found it?
 16 A **No. No forensics were available at the**
 17 **time.**
 18 Q Okay. And that leads me to my next
 19 question.
 20 At what point did you send the gun for
 21 fingerprints?
 22 A **As soon as I seized it and placed it into**
 23 **evidence.**
 24 Q You sent it for fingerprints?
 25 A **I'm sorry. Fingerprints?**

1 A **Yes.**
 2 Q And you would agree with me that that's a
 3 clear -- or, I'm sorry, that is a smooth,
 4 metallic object that holds bullets that goes in a
 5 gun.
 6 A **Yes.**
 7 Q Okay. Was that sent for fingerprints?
 8 A **No.**
 9 Q Were the actual rounds, or the bullets,
 10 sent for fingerprints?
 11 A **No.**
 12 Q And the reason you didn't send those out
 13 to be fingerprinted is because you knew whose gun
 14 it was?
 15 A **A couple reasons. I felt very, very**
 16 **confident that it was his, the defendant's.**
 17 **And my experience is, in my 13 years,**
 18 **every gun I've sent out, I've never got a print**
 19 **back.**
 20 **I could have sent it out, but I -- I felt**
 21 **confident, a hundred percent confident, it was**
 22 **Mr. Robertson's gun.**
 23 Q You were a hundred percent confident it
 24 was Mr. Robertson's gun.
 25 A **Yes.**

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1 Q And the reason that is, is because it was
2 in his car?
3 A **In his car, the position it was at, what**
4 **I saw on the female, and Mr. Sellers did not make**
5 **any movements to go behind the seat.**
6 Q Well, besides the dress, what did you see
7 on the female?
8 A **Just that there was no way she could**
9 **conceal an item without me seeing it.**
10 Q Okay. And if you were so positive that
11 it's Mr. Robertson's gun, in the initial criminal
12 complaint -- which you filed, correct?
13 A **Yes.**
14 Q -- you didn't charge him with the gun,
15 did you?
16 A **No.**
17 Q Initially you filed a document which is
18 called a police criminal complaint. Can you tell
19 the jury what that is?
20 A **That's a -- that's a -- pretty much a**
21 **complaint -- a police officer putting charges on**
22 **a defendant, which, that paperwork would show**
23 **each charge, describing each charge, why they're**
24 **being charged with it --**
25 Q Right.

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1 A **-- in detailed form.**
2 Q And on this -- this document was filed on
3 April 7th, the same day as the incident, correct?
4 A **Yes.**
5 Q Okay. But you'd agree with me that
6 Mr. Robertson's not charged with the gun in the
7 initial charging document, correct?
8 A **Correct. That was 'cause of that whole**
9 **situation of trying to get him arraigned on**
10 **everything at once. He ended up bein' arraigned**
11 **before I could do the search warrant.**
12 Q In fact, he wasn't charged with the gun
13 until May 3rd, 2012.
14 A **Correct.**
15 Q After you locate the gun -- and you don't
16 charge Mr. Robertson. You wait several weeks to
17 actually charge him. So we're clear then, right?
18 A **Yes.**
19 Q During that time, what did you do to try
20 and ascertain who the identity of that female
21 was?
22 A **I didn't try to find out who she was.**
23 I --
24 Q You didn't do anything, right?
25 A **No.**

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1 Q No investigation.
2 A **The only investigation that I did was on**
3 **the gun.**
4 Q Didn't talk -- didn't talk to Corey
5 Sellers or try and talk to him?
6 A **I believe I spoke to him in booking, but**
7 **not after the search warrant, no. Prior.**
8 Q Didn't go to Hall Manor. Didn't do
9 anything.
10 A **No.**
11 Q You would agree with me that the gun was
12 registered to a female.
13 A **Yes.**
14 Q And that the gun was not reported stolen.
15 A **She attempted to report it stolen.**
16 **Corporal Olivera took the report --**
17 Q Okay. Go ahead.
18 A **Corporal Olivera took the report, put was**
19 **in NCIC. I made contact with her. She said, I**
20 **reported it stolen, gave me the date.**
21 **I was able to backtrack, find that**
22 **report. It was done by Corporal Olivera.**
23 **Corporal Olivera, I met with him -- who**
24 **was the head of our Vice Unit at this time -- had**
25 **told me the reason was, the individual that took**

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1 **the firearm was a significant other to her and**
2 **that he deemed that it wasn't stolen.**
3 **So he didn't put it in NCIC as stolen.**
4 **He put it in as lost property.**
5 **My experiences with those two**
6 **individuals -- I've dealt with them a lot -- I**
7 **agree with him that they go through domestics**
8 **left and right, and I believed it wasn't stolen**
9 **either.**
10 Q The money that you find on Mr. Robertson,
11 that was not sent out for any testing, was it?
12 A **Yes. It was -- Corporal Olivera sent me**
13 **back a message indicating that the U.S. currency**
14 **was found on him with the drugs in his pocket so**
15 **he was not gonna have it ion scanned.**
16 Q Okay. So it was not sent out to be
17 tested. It was --
18 A **It was sent by me, but not sent further,**
19 **yes.**
20 Q It was not sent to a lab to be tested or
21 ion scanned.
22 A **Correct.**
23 Q What's an ion scan do?
24 A **An ion scan runs over the money to check**
25 **particles, such as drugs. If there's an overuse**

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1 of the money with drugs on your hands --
 2 And I'm not an expert witness, by any
 3 means but --
 4 Q No, and I don't mean to --
 5 A -- it'll pick up those substances. And
 6 if there's already an amount that's agreed upon
 7 or set that the common person will encounter that
 8 everyday touching the money, the drugs will be on
 9 the money. So with that, if there's anything
 10 higher, then all it shows is that that money was
 11 involved with an amount of drugs.

12 Q So whether it was your decision or not,
 13 or whether it was the corporal's decision,
 14 someone in your police department decided, we're
 15 not gonna test the money either.

16 A Yes.

17 Q Okay. And the money -- or the decision
 18 not to send the gun, the clip or the bullets for
 19 a fingerprint, whose decision was that?

20 A That was mine.

21 Q And that was because you were a hundred
 22 percent certain it was his gun.

23 A Yes.

24 MR. McQUILLAN: With the Court's
 25 indulgence.

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1 That's all I have. Thank you, Your
 2 Honor.

3 MR. ZAWISKY: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

7 BY MR. ZAWISKY:

8 Q Did you take the defendant into custody
 9 in the early morning hours of April 7, 2012?

10 A In custody, like --

11 Q In other words, when you find the cocaine
 12 in his pocket, is he arrested that evening?

13 A Yes. He was then told he was arrested,
 14 yes.

15 Q Okay. And at that point, when you arrest
 16 someone, can you just take them home with you or
 17 take them to the Harrisburg police department for
 18 any amount of time? Or do you have to take them
 19 before a judge under the law?

20 A You have to take them under the judge --
 21 in front of a judge. I believe it's six hours or
 something.

Q Generally, the rule is within six hours,
 correct?

A Yes.

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1 Q So you have to take him in front of a
 2 judge, correct?

3 A Yes.

4 Q Now, you did that in this case.

5 A Yes.

6 Q And you originally charged him with what
 7 you had in front of you at that point.

8 A Yes.

9 Q Which was cocaine and cash.

10 A Yes.

11 Q You then do a search warrant the next
 12 day, which was at a feasible time.

13 A Yes.

14 Q And you found other items.

15 A Yes.

16 Q And then you supplemented your criminal
 17 complaint.

18 A Yes.

19 Q Regarding your experience, have you taken
 20 a lot of guns off the streets of Harrisburg?

21 A Yes.

22 Q Is it your experience -- I believe you
 23 testified your decision was to not send this for
 24 prints because in your past experience, you just
 25 don't get prints off of guns.

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1 A Yes.

2 Q Okay. You could have sent it for
 3 fingerprints.

4 A Yes.

5 Q But based on your knowledge of the case
 6 and your past experience, you made a decision.

7 A Yes.

8 Q In any criminal case that you're involved
 9 in, whether it's a domestic violence case, a
 10 homicide case or a drug case, do you have to look

11 at the facts and circumstances that you have in
 12 determining what evidence can be sent to your own
 13 forensic department?

14 A Yes.

15 Q And the Pennsylvania State Police
 16 forensic department?

17 A Yes.

18 Q Are we in any kind of position to be able
 19 to send out evidence in every case to your
 20 forensic department or the Pennsylvania State
 21 Police to get fingerprints on every piece of
 22 evidence?

23 A No.

24 Q DNA evidence?

25 A No.

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1 MR. McQUILLAN: Your Honor, I'm gonna
2 object.

3 THE COURT: On what grounds?

4 MR. McQUILLAN: Well, I mean, we're
5 talkin' about -- we're basically -- he's
6 eliciting expert testimony from this officer.

7 THE COURT: And you'll be able to make an
8 argument about it.

9 MR. McQUILLAN: I'm sorry?

10 THE COURT: And you'll be able to make an
11 argument about it.

12 MR. McQUILLAN: I appreciate that.

13 THE COURT: Thank you. Continue.

14 BY MR. ZAWISKY:

15 Q In other words, in each case you make a
16 decision on what you can and can't send.

17 A **Yes. I know that firearms take a very
18 long time because they're all backed up.**

19 Q That's the Pennsylvania State Police.

20 A **Yes. Yeah.**

21 Q We talked about the ion scan, or at least
22 defense counsel questioned you on that.

23 In determining whether to send this money
24 away to get ion scanned, do you look at the facts
25 and the circumstances that you have before you?

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1 A **Yes. At the time I was under the
2 impression that anytime money was taken with a
3 drug incident, such as dealing, to send it away
4 to Vice to have it ion scanned.**

5 **Since then I've been told a little
6 differently. I don't know if it's because of
7 money or what. But they indicated that once the
8 money is found on the person, I have enough to
9 show that it is affiliated to the drug that they
10 have; whereas, if it was found in a room and the
11 drug's on them outside or something, then they
12 said to test it.**

13 Q I'm sorry. Is it fair to say the purpose
14 of an ion scan is to say that this particular
15 money is connected to a certain drug?

16 A **Yes.**

17 Q In other words, the person's holding
18 drugs, holding money, and touching back and
19 forth.

20 A **Yes.**

21 Q That would give the money a higher
22 rate --

23 A **Rate --**

24 Q -- of cocaine particles on it?

25 A **If they have cocaine, yes.**

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1 Q And if the cocaine is in the basement or
2 in somebody's car, and the money's in a different
3 location, and you want to connect the money to
4 the drugs, you want to send it out for an ion
5 scan.

6 A **Yes. Yes.**

7 Q However, if the person has cocaine in one
8 pocket and drugs [sic] in the other, fair to say
9 they're pretty close to each other.

10 A **Yes.**

11 MR. ZAWISKY: Nothing further for this
12 witness.

13 MR. McQUILLAN: All right. Your Honor,
14 may we approach?

15 THE COURT: Yes.

16 (A sidebar discussion
17 was held off the record.)
18

19
20 RECROSS EXAMINATION
21

22 BY MR. McQUILLAN:

23 Q Officer, do you have the marijuana up
24 there?

25 A **Yes.**

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1 Q Commonwealth's Exhibit -- what number is
2 that?

3 A **5.**

4 Q Okay. No one was charged with that
5 marijuana.

6 A **Yes.**

7 Q Yes?

8 A **Correct, no one was charged.**

9 Q Oh, correct, no one was charged.

10 No one was charged with possessing it?

11 A **Correct.**

12 Q No want was charged with possessing it
13 with the intent to deliver it.

14 A **Correct.**

15 Q Okay. Why is that?

16 A **That would have been a mistake in
17 communication more than likely through me to the
18 booking officer.**

19 **When I gave the charge to that booking
20 officer, they put in the arrest report, and then
21 when I pull up the initial crime report and carry
22 the charges over, I just check onto them, and
23 then it carries over to the criminal complaint.**

24 **So somewhere between there, there was
25 lost communication. And due to the fact it was**

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1 so early in the morning, I just didn't catch it.

2 Q Okay.

3 A Like I say, it happens.

4 Q Okay. You testified that you were a
5 hundred percent certain that Mr. Robertson -- it
6 was his gun.

7 A Yes.

8 Q Correct?

9 Who did the marijuana belong to? Do you
10 know that for a hundred percent?

11 A I would say it would be his.

12 Q Okay. A hundred percent?

13 A A hundred percent.

14 Q Okay. Did he have that with the intent
15 to deliver it, in your estimation?

16 A I would say --

17 MR. ZAWISKY: Objection. That's not for
18 him to decide. It's for the expert to decide.

19 THE COURT: Sustained.

20 MR. McQUILLAN: Well, Your Honor, if I
21 may briefly respond to that argument.

22 He decided that he was intending to
23 possess that with the intent to deliver the
24 cocaine. How does he not make the decision
25 that --

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1 MR. ZAWISKY: I'll withdraw that
2 objection. I'll let him -- I have no problem
3 with him answering.

4 THE COURT: All right. Answer.

5 THE WITNESS: From my past experience,
6 this amount is nowhere near the amount to be
7 considered to deliver, and it's not packaged
8 singly, wrapped as I do when I see it being
9 different, in smaller bags.

10 BY MR. McQUILLAN:

11 Q So that would have been personal use?

12 A I would say personal use, yes.

13 Q What personal use paraphernalia did you
14 find for marijuana?

15 A I didn't find any.

16 Q Oh, okay.

17 MR. McQUILLAN: That's all I have. Thank
18 you.

19 THE COURT: All right.

20 MR. ZAWISKY: No redirect.

21 THE COURT: You may step down, sir.
22 Thank you.

23 All right. Ladies and gentlemen, we will
24 take a 15-minute recess, and we'll come back and
25 continue with the testimony.

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1 Please do not discuss this case amongst
2 yourselves or with anyone else. And we'll have
3 you back in 15 minutes.

4 Thank you.

5
6 (The jury left the
7 courtroom, after which
8 the proceedings
9 continued.)

10 THE COURT: If you'd just raise your
11 right hand, sir.

12
13 (The defendant was duly
14 sworn or affirmed.)

15
16 THE COURT: All right. And please state
17 your name for the record.

18 THE DEFENDANT: Kashif Robertson.

19 THE COURT: And how old are you?

20 THE DEFENDANT: 28.

21 THE COURT: And how far did you go in
22 school?

23 THE DEFENDANT: Eleventh grade.

24 THE COURT: And do you read, write, and
25 understand the English language?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And you understand that you
3 have a right, a Fifth Amendment right, to testify
4 or not to testify.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you understand that?
7 And actually, we colloquied you last
8 week, and you chose to testify.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And it's my understanding now
11 that you're choosing not to testify.

12 THE DEFENDANT: No, ma'am.

13 THE COURT: You are not going to
14 testify --

15 THE DEFENDANT: Yes, ma'am. I do want to
16 testify.

17 THE COURT: I missed it. You are going
18 to testify?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Oh, okay. And you understand
21 that you don't have to testify.

22 THE DEFENDANT: I --

23 THE COURT: It's your choice. And you
24 can do that voluntarily, knowingly, and
25 intelligently.

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1 I believe you did have a communication
 2 with Mr. McQuillan as to testify or not to
 3 testify.
 4 THE DEFENDANT: Yes, ma'am.
 5 THE COURT: And you're choosing to
 6 testify.
 7 THE DEFENDANT: Yes, ma'am.
 8 THE COURT: Okay. And obviously you know
 9 that you'd be subject to cross-examine. However,
 10 I believe there was *no crimen falsi* in your past.
 11 Is that correct?
 12 THE DEFENDANT: Yes, ma'am.
 13 MR. ZAWISKY: Yes, Your Honor, there is
 14 none.
 15 THE COURT: All right. Any further
 16 questions?
 17 MR. McQUILLAN: Do you have any questions
 18 for me, Mr. Robertson?
 19 THE DEFENDANT: No, sir.
 20 MR. McQUILLAN: You understand your
 21 rights to testify that the judge explained?
 22 THE DEFENDANT: Yes, I do.
 23 THE COURT: Okay. Thank you.
 24 MR. McQUILLAN: Thank you.
 25

1 Q Okay. How long have you been a police
 2 officer?
 3 A **I'm in my ninth year of service.**
 4 Q And did you originally start out as a
 5 patrol officer?
 6 A **I was on -- in the Uniformed Patrol**
 7 **Division for four years and then transferred to**
 8 **the Street Crimes Unit.**
 9 Q Were you working on April 7, 2012?
 10 A **I was.**
 11 Q And did you get called to 17 Row Hall
 12 Manor?
 13 A **I did.**
 14 Q Was that to apprehend, or at least
 15 identify and possibly apprehend, a Corey Sellers?
 16 A **Yes.**
 17 Q All right. When you arrived at that
 18 location, how did you arrive there?
 19 A **I was partnered with Officer Ishman that**
 20 **night. We were in a blue, unmarked Pontiac**
 21 **minivan.**
 22 **Officer Bates directed us to that area.**
 23 **Obviously he had said Corey Sellers was the**
 24 **passenger in a green Chrysler vehicle, and it was**
 25 **parked in front of 17 Row.**

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1 (A recess was taken.)
 2
 3 THE COURT: All right. Mr. Zawisky.
 4 MR. ZAWISKY: Commonwealth calls Officer
 5 Fustine.
 6
 7 JOHN FUSTINE,
 8 called as a witness,
 9 being duly sworn or affirmed,
 10 testified as follows:
 11
 12 THE WITNESS: Good afternoon, Judge.
 13 THE COURT: Good afternoon.
 14 THE WITNESS: Good afternoon.
 15
 16 DIRECT EXAMINATION
 17 BY MR. ZAWISKY:
 18 Q Please state your name.
 19 A **John Fustine. My last name is spelled**
 20 **F-u-s-t-i-n-e.**
 21 Q And Officer Fustine, with whom are you
 22 employed?
 23 A **Harrisburg Bureau of Police.**
 24 Q And in what capacity?
 25 A **I'm assigned to the Street Crimes Unit.**

1 **As we came into the area, Officer Ishman**
 2 **parked, and I got out a couple vehicles before**
 3 **the Chrysler, went to the rear of those vehicles.**
 4 Q Let me stop you right there. Now, did
 5 you guys just slowly drive up to this location or
 6 to this car, or did you guys rush up?
 7 A **We slowly drove up to the vehicle.**
 8 Q You said you slowly went up.
 9 A **Yes.**
 10 Q Okay. When you get up -- like, when you
 11 slowly get up to the vehicle, do you guys just
 12 get out of the car and just stroll up to the car?
 13 Or do you guys go up to the green Chrysler -- how
 14 do you that?
 15 A **Like I said, I got out first and went to**
 16 **the rear so I could be behind the vehicle.**
 17 Q Okay.
 18 A **And then they went to the front of the**
 19 **vehicle.**
 20 Q Okay. And you go up towards the
 21 passenger's side? Or which side?
 22 A **I stayed to the rear of the driver's**
 23 **side.**
 24 Q Okay. You go to the rear of the driver's
 25 side. Assuming this is the vehicle and it's

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1 backed in at Hall Manor and this is the front
 2 here, the front of the table, driver's side's on
 3 the left, passenger's side is on the right, would
 4 you guys have entered in this area here, which
 5 would have been the roadway?
 6 A **Yes.**
 7 Q Okay. Do you guys -- who's drivin' the
 8 car, you or Ishman?
 9 A **Officer Ishman.**
 10 Q Okay. So he's drivin' the car. How far
 11 away do you guys park from the suspect vehicle?
 12 A **I believe, like, probably one car away**
 13 **from it.**
 14 Q Okay. You guys drive up, park, get out.
 15 A **I get out.**
 16 Q And you go to which side?
 17 A **I went to the rear of the driver's side.**
 18 Q So you're back over in this area. This
 19 is the driver's side, correct?
 20 A **Yes.**
 21 Q All right. What do you do? What's your
 22 role?
 23 A **When I exited the vehicle I unholstered**
 24 **my Taser. And the driver, the defendant, had**
 25 **gotten out of the vehicle.**

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1 Q Now, from your recollection, was he out
 2 of the vehicle when you got there or did he have
 3 to get out of the vehicle?
 4 A **He got out of the vehicle.**
 5 Q Okay. What about the passenger?
 6 A **As other officers were speakin' with the**
 7 **defendant, I observed the passenger door fly open**
 8 **and a male sprint to the rear of the vehicle in**
 9 **between the housing rows.**
 10 Q So he's on this side. He gets out of the
 11 passenger's side and then sprints back.
 12 A **Yes.**
 13 Q All right. What's your job at that
 14 point?
 15 A **At that point, knowin' that Officer Bates**
 16 **observed him as Corey Sellers, a wanted**
 17 **individual, I paralleled him in a full sprint and**
 18 **deployed my Taser.**
 19 Q Well, did you know he was Corey Sellers
 20 at that point or did you suspect he was Corey
 21 Sellers?
 22 A **Officer Bates advised us he was -- it was**
 23 **Corey Sellers.**
 24 Q Okay. He takes off. You chase him?
 25 A **I did.**

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1 Q Do you taze him?
 2 A **I deployed my Taser, yes.**
 3 Q Is he taken into custody?
 4 A **He is taken into custody.**
 5 Q If anything -- what, if anything, is
 6 found on him?
 7 A **After taken into custody he was**
 8 **subsequently searched, and nothing illegal was**
 9 **found on his person.**
 10 Q You then weren't involved in anything
 11 that occurred back at the car.
 12 A **I was not.**
 13 Q Okay. So essentially, your job was, show
 14 up, walk towards the car. Sellers runs away.
 15 You chase him, take him into custody.
 16 A **Yes.**
 17 MR. ZAWISKY: Nothing further of this
 18 witness.
 19 THE COURT: Any cross?
 20 MR. McQUILLAN: Yes.
 21
 22 CROSS EXAMINATION
 23
 24 BY MR. McQUILLAN:
 25 Q When you arrive, Officer, it's just you

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1 and -- well, there's several officers there,
 2 right?
 3 A **Yes.**
 4 Q But you're with Officer Ishman, together
 5 in a blue minivan.
 6 A **Correct.**
 7 Q And you approach slowly to get to the
 8 scene.
 9 A **Yes.**
 10 Q And when you get there, are you driving
 11 or are you the passenger?
 12 A **I'm the passenger.**
 13 Q And you get out of the passenger's side
 14 of your minivan.
 15 A **Right.**
 16 Q And you walk to the back of the vehicle.
 17 A **Yes.**
 18 Q During that time Officer Bates is where?
 19 A **I believe in the front of that vehicle,**
 20 **but I can't recall that --**
 21 Q Okay.
 22 A **-- for sure.**
 23 Q And as you walk to the back of that
 24 vehicle, Mr. Robertson gets out of his car and
 25 walks to the back of the vehicle as well?

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1 A **Yes.**
 2 Q And during this time, as you walk to the
 3 back of the vehicle, Mr. Robertson is at the back
 4 of the vehicle, there's -- Mr. Sellers is in
 5 the -- or there's a person in the front
 6 passenger's side.
 7 A **Right.**
 8 Q Can you see him?
 9 A **I cannot.**
 10 Q It's dark out?
 11 A **It is dark.**
 12 Q You're lookin' at the vehicle?
 13 A **I am.**
 14 Q And you can't see who's in the
 15 passenger's side?
 16 A **No.**
 17 Q Can you see who's in the backseat?
 18 A **I didn't see anybody in the backseat.**
 19 Q Okay. And how long would you say it
 20 takes? A couple seconds, at least, for you to
 21 get out of your car, walk to the back of the
 22 vehicle?
 23 A **Right.**
 24 Q How long would you say you were there at
 25 the back of the vehicle until Mr. Sellers jumps

1 **female. All I knew, it was Corey Sellers was the**
 2 **passenger in that vehicle, and he was a wanted**
 3 **individual.**
 4 MR. McQUILLAN: That's all I have. Thank
 5 you, sir.
 6 THE COURT: Anything further?
 7
 8 REDIRECT EXAMINATION
 9
 10 BY MR. ZAWISKY:
 11 Q Did Bates identify the passenger as a
 12 suspected Corey -- as being suspected as Corey
 13 Sellers or as 100 percent certainty as being
 14 Corey Sellers?
 15 A **I recall him saying it was Corey Sellers.**
 16 MR. ZAWISKY: Nothing further for this
 17 witness.
 18 MR. McQUILLAN: No, ma'am.
 19 THE COURT: You may step down. Thank
 20 you.
 21 THE WITNESS: Thank you.
 22 MR. ZAWISKY: Commonwealth calls
 23 Detective John Goshert.
 24
 25

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1 out and runs?
 2 A **It happened probably within ten seconds.**
 3 Q Okay. So you get out of your car. You
 4 walk to the back. My client is there.
 5 A **Yes.**
 6 Q Listening to the commands of other
 7 officers.
 8 A **Right.**
 9 Q And you're there ten seconds or so, and
 10 Mr. Sellers gets out and runs.
 11 A **Yes.**
 12 Q And you never see anyone in the backseat.
 13 A **I did not see anybody in the backseat.**
 14 Q Okay. And you didn't see Mr. Sellers
 15 until he jumped out and runs.
 16 A **Right.**
 17 Q And you weren't certain who that was, but
 18 Mr. Bates -- Officer Bates told you it was
 19 Mr. Sellers?
 20 A **He identified him as Corey Sellers.**
 21 Q When did he do that?
 22 A **Over the radio, before we got there.**
 23 Q Okay. Did you know anything about a
 24 black female?
 25 A **I did not know anything about a black**

1 JOHN GOSHERT,
 2 called as a witness,
 3 being duly sworn or affirmed,
 4 testified as follows:
 5
 6 DIRECT EXAMINATION (QUALIFICATIONS)
 7
 8 BY MR. ZAWISKY:
 9 Q Please state your name.
 10 A **My name is John Goshert. It's**
 11 **G-o-s-h-e-r-t.**
 12 Q And Detective Goshert, with whom are you
 13 employed?
 14 A **Currently I'm a detective with Dauphin**
 15 **County Criminal Investigation, which is the**
 16 **investigative arm of the District Attorney's**
 17 **Office.**
 18 Q How long have you been involved with law
 19 enforcement?
 20 A **I started my law enforcement career in**
 21 **1974.**
 22 Q With who?
 23 A **Initially I was with the Pennsylvania**
 24 **Capitol Police, and I was there for one year,**
 25 **until 1975.**
 Q And then you went to the Harrisburg

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1 the corner ones --

2 A **These over here?**

3 Q Yes. People store drugs in corner

4 baggies like this.

5 A **Yes. Absolutely.**

6 Q Okay.

7 A **You can buy them in corner baggies like**

8 **that.**

9 Q When people who use drugs get arrested,

10 do sometimes they have empty baggies like this on

11 them?

12 A **Yes, sir.**

13 Q Have you seen drugs bought and sold in

14 full bags?

15 A **Yes, sir.**

16 Q So people that sell drugs could have this

17 bag.

18 A **Yes, sir.**

19 Q And people that use drugs could have this

20 bag.

21 A **Absolutely.**

22 Q Did you know that the scale was not found

23 on Mr. Robertson?

24 A **Just from listening. And my indication**

25 **was, it was found in the vehicle.**

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1 Q That doesn't change your opinion either.

2 A **Doesn't change my opinion that lookin' at**

3 **the overall thing that this crack cocaine would**

4 **be possessed with the intent to sell.**

5 Q And -- but we agree that, certainly,

6 someone could use that much cocaine.

7 A **You could use 10, 20, 30 times as much.**

8 **Yes, sir.**

9 Q The bag of marijuana --

10 A **Okay.**

11 Q -- by lookin' at that bag of marijuana,

12 can you give me an opinion whether that's

13 possessed with the intent to deliver?

14 A **I don't think I have enough facts and**

15 **circumstances to indicate that that would be**

16 **possessed with the intent to deliver.**

17 MR. McQUILLAN: That's all I have, Your

18 Honor.

19 THE COURT: Any redirect?

20 MR. ZAWISKY: Court's indulgence.

21 No, Your Honor. No questions.

22 THE COURT: All right. Thank you, sir.

23 You may step down.

24 THE WITNESS: Yes.

25 MR. ZAWISKY: Your Honor, there is a

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1 stipulation as to the fact that the defendant is

2 not -- does not have a license to carry a firearm

3 in the Commonwealth of Pennsylvania.

4 I believe Mr. McQuillan agrees to that.

5 MR. McQUILLAN: I do.

6 THE COURT: And again, ladies and

7 gentlemen, a stipulation is agreed upon that they

8 didn't have to bring somebody in to indicate that

9 the defendant did not have a legitimate license

10 to carry a firearm.

11 So -- and that's one of the elements of

12 the crime that the Commonwealth must prove, so

13 they're already agreeing that that element has

14 been proven.

15 All right. Anything further?

16 MR. ZAWISKY: We'd like to briefly

17 re-call Officer Bates to just clarify something.

18 THE COURT: Any objections?

19 MR. McQUILLAN: Your Honor, may we

20 approach?

21 THE COURT: Sure.

22

23 (A sidebar discussion

24 was held off the record.)

25

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1 MR. ZAWISKY: Commonwealth re-calls

2 Officer Bates.

3

4 DIRECT EXAMINATION

5

6 BY MR. ZAWISKY:

7 Q Officer Bates, you're still under oath.

8 Do you understand that?

9 A **Yes.**

10 Q Earlier you were present when Officer

11 Fustine testified about receiving information as

12 to Corey Sellers being the passenger in the

13 vehicle?

14 A **Yes.**

15 Q And that it came over the radio?

16 A **Yes.**

17 Q Can you explain that to us, please?

18 A **Generally when I'm told information such**

19 **as that, I call it out over the radio to prep. I**

20 **usually say, Street Crime Units, go to Channel 1.**

21 **That way I can discuss with everybody, instead of**

22 **callin' on the phone, bouncin' around, doin' a**

23 **little tree thing there, and people missing**

24 **important stuff.**

25 **I just tell the information. And at the**

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1 **time APO Banning had told me that he was supposed**
 2 **to be a passenger of that vehicle. When it came**
 3 **across the radio, that's what I would have said.**

4 Q That he was the passenger.

5 A **Yes.**

6 **However, the vehicle was not in motion.**
 7 **These two gentlemen were walking to the vehicle.**
 8 **They did get in on those sides of the vehicle. I**
 9 **was not a hundred percent certain that**
 10 **Mr. Sellers was the driver or passenger.**

11 **That was the only time I would have said**
 12 **that.**

13 Q Just that he was suspected at that point.

14 A **Yes.**

15 Q From what you were told by another
 16 officer.

17 A **Yes. And that -- we could have stopped**
 18 **them, and he may not have even been in the**
 19 **vehicle. We wouldn't have known.**

20 MR. ZAWISKY: Nothing further for this
 21 witness.

22 THE COURT: Any recross?

1 will move them at this time.

2 THE COURT: They're all admitted.

3 MR. ZAWISKY: Commonwealth rests, Your
 4 Honor.

5 THE COURT: All right. Ladies and
 6 gentlemen, that conclude the Commonwealth's case.

7 So at this time we are going to take our
 8 evening recess, and we'll do -- we'll resume
 9 tomorrow morning at 8:30.

10 So if you're back and in your seat, we'll
 11 finish the case in the morning, and it will be
 12 your job to reach a verdict.

13 Pleasing do not discuss this with anyone
 14 or amongst yourselves. And we'll see you back
 15 here to start at 8:30.

16 Thank you.

17
 18 (The jury left the
 courtroom, after which
 19 the proceedings
 continued.)
 20

21
 22 THE COURT: Is it my understanding you
 23 now do not want to testify?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. Do you want me to

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1 CROSS EXAMINATION

3 BY MR. McQUILLAN:

4 Q Just -- just so we're clear, you
 5 testified today that you had no idea who the
 6 driver was, who the passenger was, right?

7 A **Correct.**

8 Q And Officer Fustine said that you called
 9 it out that Mr. Sellers was in fact the
 10 passenger.

11 A **Yes. All the information I would have**
 12 **said over the radio.**

13 MR. McQUILLAN: That's all I have.

14 THE COURT: All right. Thank you, sir.

15 MR. ZAWISKY: Your Honor, I believe we've
 16 marked the Commonwealth's lab report Exhibit 8,
 17 which includes the stipulations for the weights
 18 and results of the lab report, as Commonwealth's
 19 Exhibit 8. Move that into evidence.

20 THE COURT: Okay.

21 MR. McQUILLAN: No objection.

22 THE COURT: All right.

23 MR. ZAWISKY: And I believe
 24 Commonwealth's Exhibits 1 through 7 have already
 25 been moved into evidence. If they have not, I

1 colloquy you now or tomorrow morning, in case you
 2 change your mind again?

3 THE DEFENDANT: Tomorrow morning.

4 THE COURT: Tomorrow morning. All right.
 5 Then we'll start at 8:20. Thank you.

6 MR. McQUILLAN: Thank you very much, Your
 7 Honor.

11
 12 (The proceedings recessed at 3:37 p.m.)
 13
 14
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 23
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